

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

NOV 21 2022

MITCHELL R. ELFERS
CLERK

Emma Serna, and)
Mike Serna,)
Plaintiffs,)
)
v.)
)
U.S.A. Compass Bank,)
a/k/a Compass Bank,)
a/k/a PNC,)
Defendants.)

Case no.

Jury Trial (No)

Civil Case no.1:22-cv-00852-JHR

AMENDED COMPLAINT

CIVIL CASE ALLEGING BREACH OF CONTRACT

FIDUCIARY DUTY

Plaintiffs

Mike Serna/retired
P.O. Box 65384
Albuquerque, NM 87193
(505)321-1661

Emma Serna/retired
P.O. Box 65384
Albuquerque, NM 87193
(505)321-1661

Defendants

USA Compass Bank
a/k/a Compass Bank
a/k/a PNC Bank
249 Fifth Avenue
One PNC Plaza
Pittsburgh, PA

BASIS FOR JURISDICTION:

28 U.S.C. 1331

State Tort Negligence Act

Federal Bank Law

AMOUNT IN CONTROVERSY:

\$150,000.00

UNITED STATES DISTRICT COURT

DISTRICT OF NEW MEXICO

STATEMENT OF CLAIM:

In this complaint, PNC Bank, has taken over all assets and liabilities of Compass Bank, and USA Compass Bank.

1. The Plaintiffs were harmed by the financial insecurity, safety of the customer's property, failed to perform it's outlined duties. The Bank, used deliberate deception by not issuing or failing to have the customer's authorization use of the owner's funds to disburse or misdirected the customer's funds to some one or for some unknown reason, as the funds are now gone, and not available for the customer's daily use for survival, food, medical necessities, etc.

2. On April 21, 2018 a total of \$10,598.22 was disbursed without consent funds that were protected funds. My wife's mother past away and Ms. Serna was her heir, and legally and rightfully left her these funds. These funds became community property, as New Mexico is a community state.

3. A wrongful garnishment was issued to Compass Bank as the judgment was against a Company, and not against Emma and Mike Serna individually or against them at all. We, the Plaintiffs' communicated with the Bank, and the Bank responded with, we are going to disburse your funds any way. On April 23, 2018. Communication started with CFPB March 25, 2018, and continued through out 2019. The Bank was not going to Honor their fiduciary duty to their customer. Proof was presented that the person that

Issued the writ was not a litigant in any lawsuit, and that a Company was sued. The Bank proceeded to disburse funds that belonged to both Emma and Mike Serna.

4. On 08/28/2019, the Plaintiffs made a payment on their HELOC, of \$10,000.00, And the payment was never posted to the account, and the Bank never responded with Any kind of action on what happened to the funds. Check no. 2598921, cashier's check, Which stated from Emma Serna for payment to the HELOC. The Plaintiff's inquired About their funds, and the manager at the fourth street branch said their records showed The check was cashed, and Serna's new bank verified it was true, the funds cleared, but Compass Bank never cared or responded to its' misdirection.

5. In the latter part of 2019, and the beginning of 2020, the bank started misdirecting The HELOC payments. The monthly payment was made on time, every other payment the bank would not show the payment so Ms. Serna would send them another payment so the account would be current. This was a sign, to the Plaintiffs, that Compass Bank was trying to find a way to foreclose on the "Mike R. Serna Irrevocable Living Trust Property", and the Bank was hoping the Serna's would start missing payments.

6. On 10/12/2021 BBVA USA, had changed their name, and became a part of PNC Bank. BBVA USA sent their standard statement to pay the monthly payment to them, and then PNC Bank sent a statement for the same amount, the same date to pay them the monthly payment. Both Banks did not make this a smooth transition as each Bank imposed improper processing of payments, and made improper transferring of the account.

BBVA USA is owned by PNC, and therefore both payments should have been credited to Serna's Account, and the account has never showed that the extra payment, made to

BBVA USA was ever credited.

7. The customer never received a statement or any kind of answer of where the payments were applied. The customer has a right to receive a itemized record of funds, and this not considered unjust enrichment, and establishing dishonesty, dishonest assistance in a breach of fiduciary duty, misdirected payments, and misdirected funds expose the Bank to liability, and restitution for unjust enrichment. The breach of trust and fiduciary duty has played a part in the cause of this action.

RELIEF SOUGHT

1. The Plaintiffs, hereby seek to recover the additional payments made through out the year of 2020, of \$371.17 for the months of January, February, and March. The additional Payments made, of \$371.17, during 2019, in May 19, July 23, August, 20, October 23 without ever being credited to Serna's HELOC, mortgage.

2. The additional interest paid of the 4.00 per cent on these funds. All payments cleared the Serna's Bank account.

3. Refund the \$10,000.00 payment made on the HELOC on 08/28/2019, with interest from the deposited date of 08/28/2019.

4. The beneficiaries protected funds, by law, of \$10598.22 paid back with interest. From April 21, 2018.

5. The disclosure of personal and financial information to a adverse party. Requested by Attorney Daniel White, for fraudulent and misconduct deeds. Ms. Serna wrote to PNC Bank stating that this was fraud and misconduct by Attorney White.

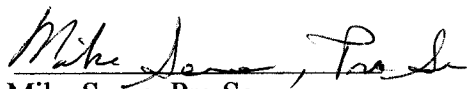
6. Attorney White's misconduct was brought on, by his clients, knowing that their Case was appealed, and was a wrongful Complaint.

7. Misconduct with mortgage payments.

We, the Plaintiffs, therefore, request all our funds returned at the going Courts' permissible rate, and punitive damages, because the harm has injured the entire family without a reasonable reason or a sound excuse. Gross negligence. The Bank never disclosed the amounts or the direction the funds were distributed, therefore, in our eyes this is an act of admittance of the improper misappropriation of the funds.

The Plaintiffs' therefore, request the relief they are entitled to, and this Courts' assistance in holding the Bank liable for the damages occasioned by the loss, through the Bank's gross negligence made with the knowledge of misdirecting Serna's funds, and causing undue stress, and damages, and all the improper processing of payments, and improper servicing. The Relief sought is \$150,000.00.

Respectfully submitted,



Mike Serna, Pro Se
P.O. Box 65384
Albuquerque, NM 87193
(505)321-1661

11-21-2022

CERTIFICATE OF SERVICE

I hereby certify a copy was mailed to Defendants on

this November 23rd, 2022

BBVA USA, a/k/a
BBVA Compass Bank
a/k/a PNC Bank

249 Fifth Avenue
One PNC Plaza
Pittsburgh, PA

Mike Jones
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Albany, N.Y. 12203
505-321-1661